

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TYRONE NOEL NUNN,

Plaintiff

v.

DEPARTMENT OF CORRECTIONS, et al.,

Defendants

Case No.: 2:24-cv-01312-APG-DJA

Dismissal Order

Plaintiff Tyrone Noel Nunn brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. ECF No. 1-1. On July 22, 2024, the magistrate judge ordered Nunn to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before September 20, 2024. ECF No. 3. The magistrate judge warned Nunn that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Nunn did not file a fully complete application to proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*

1 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
2 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
3 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
4 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*,
7 833 F.2d at 130).

8 The first two factors, the public’s interest in expeditiously resolving this litigation and the
9 court’s interest in managing its docket, weigh in favor of dismissal of Nunn’s claims. The third
10 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
11 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
12 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
13 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
14 outweighed by the factors favoring dismissal.

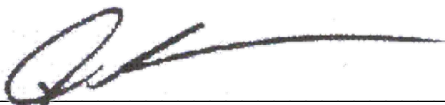
15 The fifth factor requires me to consider whether less drastic alternatives can be used to
16 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
17 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
18 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
19 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every
20 sanction short of dismissal before finally dismissing a case, but must explore possible and
21 meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because
22 this action cannot realistically proceed until and unless Nunn either files a fully complete
23 application to proceed *in forma pauperis* or pays the \$405 filing fee for a civil action, the only

1 alternative is to enter a second order setting another deadline. But the reality of repeating an
2 ignored order is that it often only delays the inevitable and squanders the court's finite resources.
3 The circumstances here do not indicate that this case will be an exception: there is no hint that
4 Nunn needs additional time or evidence that he did not receive the court's order. Setting another
5 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors
6 dismissal.

7 **II. Conclusion**

8 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
9 dismissal. It is therefore ordered that this action is dismissed without prejudice based on Nunn's
10 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$405
11 filing fee in compliance with the magistrate judge's July 22, 2024, order. The Clerk of Court is
12 directed to enter judgment accordingly and close this case. No other documents may be filed in
13 this now-closed case. If Nunn wishes to pursue his claims, he must file a complaint in a new
14 case.

15 Dated: October 7, 2024

16 
17 _____
18 Chief U.S. District Judge
19
20
21
22
23